

AMENDED IN ASSEMBLY SEPTEMBER 2, 2005

AMENDED IN SENATE APRIL 18, 2005

SENATE BILL

No. 248

Introduced by Senator Figueroa

February 15, 2005

~~An act to amend Sections 1601.1, 1616.5, and 1742 of the Business and Professions Code, relating to dentistry. An act to amend Sections 473.15, 1601.1, 1616.5, 1742, and 4929 of, to repeal Section 4929.5 of, and to repeal and add Sections 4928 and 4934 of, the Business and Professions Code, relating to professions and vocations.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 248, as amended, Figueroa. ~~Dental Board of California.~~ Professions and vocations.

(1) *The Osteopathic Initiative Act provides for the creation of the Osteopathic Medical Board of California to license and regulate osteopathic physicians. Existing law requires the board to prepare an analysis and submit a report, containing specified information, to the Joint Committee on Boards, Commissions, and Consumer Protection on or before September 1, 2004.*

This bill would require the board to prepare the analysis and submit the report to the Joint Committee on Boards, Commissions, and Consumer Protection on or before September 1, 2010.

(2) Existing law provides for the licensure and regulation of the practice of dentistry by the Dental Board of California, and authorizes the board to appoint an executive officer. Existing law also establishes the Committee on Dental Auxiliaries within the jurisdiction of the board. The provisions establishing the board, authorizing the board to appoint an executive officer, and establishing the committee are inoperative as of July 1, 2006, and are repealed as of January 1, 2007.

This bill would instead make these provisions inoperative and repealed on July 1, 2010, and January 1, 2011, respectively.

(3) The Acupuncture License Act provides for licensing and regulation of acupuncturists by the Acupuncture Board, which consists of 9 members. Under existing law, the provisions governing the board and its executive director become inoperative on July 1, 2006, and are repealed on January 1, 2007.

This bill would provide for repeal of the board on January 1, 2006. The bill would create a new board of 7 members with a revised membership. The bill would authorize an appointing power to appoint a member to the new board who was a member of the prior board. The provisions governing the new board and its executive director would become inoperative on July 1, 2008, and would be repealed on January 1, 2009.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 0.5. Section 473.15 of the Business and
2 Professions Code is amended to read:

3 473.15. (a) The Joint Committee on Boards, Commissions,
4 and Consumer Protection established pursuant to Section 473
5 shall review the following boards established by initiative
6 measures, as provided in this section:

7 (1) The State Board of Chiropractic Examiners established by
8 an initiative measure approved by electors November 7, 1922.

9 (2) The Osteopathic Medical Board of California established
10 by an initiative measure approved June 2, 1913, and acts
11 amendatory thereto approved by electors November 7, 1922.

12 (b) The Osteopathic Medical Board of California shall prepare
13 an analysis and submit a report as described in subdivisions (a) to
14 (e), inclusive, of Section 473.2, to the Joint Committee on
15 Boards, Commissions, and Consumer Protection on or before
16 September 1, ~~2004~~ 2010.

17 (c) The State Board of Chiropractic Examiners shall prepare
18 an analysis and submit a report as described in subdivisions (a) to
19 (e), inclusive, of Section 473.2, to the Joint Committee on
20 Boards, Commissions, and Consumer Protection on or before
21 September 1, 2005.

1 (d) The Joint Committee on Boards, Commissions, and
2 Consumer Protection shall, during the interim recess of 2004 for
3 the Osteopathic Medical Board of California, and during the
4 interim recess of 2005 for the State Board of Chiropractic
5 Examiners, hold public hearings to receive testimony from the
6 Director of Consumer Affairs, the board involved, the public, and
7 the regulated industry. In that hearing, each board shall be
8 prepared to demonstrate a compelling public need for the
9 continued existence of the board or regulatory program, and that
10 its licensing function is the least restrictive regulation consistent
11 with the public health, safety, and welfare.

12 (e) The Joint Committee on Boards, Commissions, and
13 Consumer Protection shall evaluate and make determinations
14 pursuant to Section 473.4 and shall report its findings and
15 recommendations to the department as provided in Section 473.5.

16 (f) In the exercise of its inherent power to make investigations
17 and ascertain facts to formulate public policy and determine the
18 necessity and expediency of contemplated legislation for the
19 protection of the public health, safety, and welfare, it is the intent
20 of the Legislature that the State Board of Chiropractic Examiners
21 and the Osteopathic Medical Board of California be reviewed
22 pursuant to this section.

23 (g) It is not the intent of the Legislature in requiring a review
24 under this section to amend the initiative measures that
25 established the State Board of Chiropractic Examiners or the
26 Osteopathic Medical Board of California.

27 SECTION 1. Section 1601.1 of the Business and Professions
28 Code is amended to read:

29 1601.1. (a) There shall be in the Department of Consumer
30 Affairs the Dental Board of California in which the
31 administration of this chapter is vested. The board shall consist of
32 eight practicing dentists, one registered dental hygienist, one
33 registered dental assistant, and four public members. Of the eight
34 practicing dentists, one shall be a member of a faculty of any
35 California dental college and one shall be a dentist practicing in a
36 nonprofit community clinic. The appointing powers, described in
37 Section 1603, may appoint to the board a person who was a
38 member of the prior board. The board shall be organized into
39 standing committees dealing with examinations, enforcement,
40 and other subjects as the board deems appropriate.

(b) For purposes of this chapter, any reference in this chapter to the Board of Dental Examiners shall be deemed to refer to the Dental Board of California.

(c) The board shall have all authority previously vested in the existing board under this chapter. The board may enforce all disciplinary actions undertaken by the previous board.

(d) This section shall become inoperative on July 1, ~~2010~~, 2008, and, as of January 1, ~~2011~~, 2009, is repealed, unless a later enacted statute that is enacted before January 1, ~~2011~~, 2009, deletes or extends the dates on which it becomes inoperative and is repealed. The repeal of this section renders the board subject to the review required by Division 1.2 (commencing with Section 473).

SEC. 2. Section 1616.5 of the Business and Professions Code is amended to read:

1616.5. (a) The board, by and with the approval of the director, may appoint a person exempt from civil service who shall be designated as an executive officer and who shall exercise the powers and perform the duties delegated by the board and vested in him or her by this chapter.

(b) This section shall become inoperative on July 1, ~~2010~~, 2008, and, as of January 1, ~~2011~~, 2009, is repealed, unless a later enacted statute that is enacted before January 1, ~~2010~~, 2009, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 3. Section 1742 of the Business and Professions Code is amended to read:

1742. (a) There is within the jurisdiction of the board a Committee on Dental Auxiliaries.

(b) The Committee on Dental Auxiliaries shall have the following areas of responsibility and duties:

(1) The committee shall have the following duties and authority related to education programs and curriculum:

(A) Shall evaluate all dental auxiliary programs applying for board approval in accordance with board rules governing the programs.

(B) May appoint board members to any evaluation committee. Board members so appointed shall not make a final decision on the issue of program or course approval.

1 (C) Shall report and make recommendations to the board as to
2 whether a program or course qualifies for approval. The board
3 retains the final authority to grant or deny approval to a program
4 or course.

5 (D) Shall review and document any alleged deficiencies that
6 might warrant board action to withdraw or revoke approval of a
7 program or course, at the request of the board.

8 (E) May review and document any alleged deficiencies that
9 might warrant board action to withdraw or revoke approval of a
10 program or course, at its own initiation.

11 (2) The committee shall have the following duties and
12 authority related to applications:

13 (A) Shall review and evaluate all applications for licensure in
14 the various dental auxiliary categories to ascertain whether a
15 candidate meets the appropriate licensing requirements specified
16 by statute and board regulations.

17 (B) Shall maintain application records, cashier application
18 fees, and perform any other ministerial tasks as are incidental to
19 the application process.

20 (C) May delegate any or all of the functions in this paragraph
21 to its staff.

22 (D) Shall issue auxiliary licenses in all cases, except where
23 there is a question as to a licensing requirement. The board
24 retains final authority to interpret any licensing requirement. If a
25 question arises in the area of interpreting any licensing
26 requirement, it shall be presented by the committee to the board
27 for resolution.

28 (3) The committee shall have the following duties and
29 authority regarding examinations:

30 (A) Shall advise the board as to the type of license
31 examination it deems appropriate for the various dental auxiliary
32 license categories.

33 (B) Shall, at the direction of the board, develop or cause to be
34 developed, administer, or both, examinations in accordance with
35 the board's instructions and periodically report to the board on
36 the progress of those examinations. The following shall apply to
37 the examination procedure:

38 (i) The examination shall be submitted to the board for its
39 approval prior to its initial administration.

1 (ii) Once an examination has been approved by the board, no
2 further approval is required unless a major modification is made
3 to the examination.

4 (iii) The committee shall report to the board on the results of
5 each examination and shall, where appropriate, recommend pass
6 points.

7 (iv) The board shall set pass points for all dental auxiliary
8 licensing examinations.

9 (C) May appoint board members to any examination
10 committee established pursuant to subparagraph (B).

11 (4) The committee shall periodically report and make
12 recommendations to the board concerning the level of fees for
13 dental auxiliaries and the need for any legislative fee increase.
14 However, the board retains final authority to set all fees.

15 (5) The committee shall be responsible for all aspects of the
16 license renewal process, which shall be accomplished in
17 accordance with this chapter and board regulations. The
18 committee may delegate any or all of its functions under this
19 paragraph to its staff.

20 (6) The committee shall have no authority with respect to the
21 approval of continuing education providers; the board retains all
22 of this authority.

23 (7) The committee shall advise the board as to appropriate
24 standards of conduct for auxiliaries, the proper ordering of
25 enforcement priorities, and any other enforcement-related matters
26 that the board may, in the future, delegate to the committee. The
27 board shall retain all authority with respect to the enforcement
28 actions, including, but not limited to, complaint resolution,
29 investigation, and disciplinary action against auxiliaries.

30 (8) The committee shall have the following duties regarding
31 regulations:

32 (A) To review and evaluate all suggestions or requests for
33 regulatory changes related to dental auxiliaries.

34 (B) To report and make recommendations to the board, after
35 consultation with departmental legal counsel and the board's
36 executive officer.

37 (C) To include in any report regarding a proposed regulatory
38 change, at a minimum, the specific language of the proposed
39 changes and the reasons for and facts supporting the need for the
40 change. The board has the final rulemaking authority.

(c) This section shall become inoperative on July 1, ~~2010~~, 2008, and, as of January 1, ~~2011~~, 2009, is repealed, unless a later enacted statute which becomes effective on or before January 1, ~~2011~~, 2009, deletes or extends the dates on which it becomes inoperative and is repealed. The repeal of this section renders the committee subject to the review required by Division 1.2 (commencing with Section 473).

SEC. 4. Section 4928 of the Business and Professions Code is repealed.

~~4928. The Acupuncture Board, which consists of nine members, shall enforce and administer this chapter.~~

~~This section shall become inoperative on July 1, 2006, and, as of January 1, 2007, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2007, deletes or extends the dates on which it becomes inoperative and is repealed.~~

~~The repeal of this section renders the board subject to the review required by Division 1.2 (commencing with Section 473).~~

SEC. 5. Section 4928 is added to the Business and Professions Code, to read:

4928. The Acupuncture Board, which consists of seven members, shall enforce and administer this chapter. The appointing powers, as described in Section 4929, may appoint to the board a person who was a member of the prior board prior to the repeal of that board on January 1, 2006.

This section shall become inoperative on July 1, 2008, and as of January 1, 2009, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2009, deletes or extends the dates on which it becomes inoperative and is repealed.

The repeal of this section renders the board subject to the review required by Division 1.2 (commencing with Section 473).

SEC. 6. Section 4929 of the Business and Professions Code is amended to read:

4929. Three members of the board shall be acupuncturists with at least five years of experience in acupuncture and ~~not~~ licensed as physicians and surgeons, one member of the board shall be a licensed acupuncturist who is also a faculty member of any board approved acupuncture college, one member of the board shall be a physician and surgeon licensed in this state with

1 ~~two years of experience in acupuncture, and four members shall~~
2 ~~be public members who do not hold a license or certificate as a~~
3 ~~physician and surgeon or acupuncturist. The Governor shall~~
4 ~~appoint the four acupuncturist members qualified as provided in~~
5 ~~this section, who acupuncturist members shall be appointed to~~
6 ~~represent a cross section of the cultural backgrounds of licensed~~
7 ~~members of the acupuncturist profession.~~

8 *The Governor shall appoint the three acupuncturist members*
9 *and two of the public members, and the one licensed physician*
10 *and surgeon member qualified as provided in this section. All*
11 *members appointed to the board by the Governor shall be subject*
12 *to confirmation by the Senate. The Senate Rules Committee and*
13 *the Speaker of the Assembly shall each appoint a public member.*
14 *Any member of the board may be removed by the appointing*
15 *power for neglect of duty, misconduct, or malfeasance in office,*
16 *after being provided with a written statement of the charges and*
17 *an opportunity to be heard.*

18 *SEC. 7. Section 4929.5 of the Business and Professions Code*
19 *is repealed.*

20 ~~4929.5. In the reduction of the membership of the board or a~~
21 ~~successor board or entity from 11 to 9 members, the following~~
22 ~~transition provisions shall apply:~~

23 ~~(a) Upon the first expiration, after January 1, 1999, of the term~~
24 ~~of a physician and surgeon member, the board shall be reduced to~~
25 ~~10 members, five of whom shall be acupuncturist members, one~~
26 ~~of whom shall be a physician and surgeon, and four of whom~~
27 ~~shall be public members. Notwithstanding any other provision of~~
28 ~~law, the term of that physician and surgeon member shall not be~~
29 ~~extended for any reason.~~

30 ~~(b) Upon the first expiration, after January 1, 2000, of the term~~
31 ~~of an acupuncturist member, the board shall be reduced to nine~~
32 ~~members, four of whom shall be acupuncturist members, one of~~
33 ~~whom shall be a physician and surgeon, and four of whom shall~~
34 ~~be public members. Notwithstanding any other provision of law,~~
35 ~~the term of that acupuncturist member shall not be extended for~~
36 ~~any reason.~~

37 *SEC. 8. Section 4934 of the Business and Professions Code is*
38 *repealed.*

39 ~~4934. The board shall employ personnel necessary for the~~
40 ~~administration of this chapter; however, the board may appoint~~

1 ~~an executive officer who is exempt from the provisions of the~~
2 ~~Civil Service Act.~~

3 ~~This section shall become inoperative on July 1, 2006, and, as~~
4 ~~of January 1, 2007, is repealed, unless a later enacted statute,~~
5 ~~which becomes effective on or before January 1, 2007, deletes or~~
6 ~~extends the dates on which it becomes inoperative and is~~
7 ~~repealed.~~

8 ~~The repeal of this section renders the board subject to the~~
9 ~~review required by Division 1.2 (commencing with Section 473).~~

10 *SEC. 9. Section 4934 is added to the Business and*
11 *Professions Code, to read:*

12 *4934. (a) The board, by and with the approval of the*
13 *director, may employ personnel necessary for the administration*
14 *of this chapter, and the board, by and with the approval of the*
15 *director, may appoint an executive officer who is exempt from the*
16 *provisions of the Civil Service Act.*

17 *(b) This section shall become inoperative on July 1, 2008, and,*
18 *as of January 1, 2009, is repealed, unless a later enacted statute,*
19 *which becomes effective on or before January 1, 2009, deletes or*
20 *extends the dates on which it becomes inoperative and is*
21 *repealed.*